

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 11
	)	
MOUZON ENTERPRISES, INC.	)	CASE NO. 05-86016-jem
	)	
Debtor	)	JUDGE MASSEY

**NOTICE OF HEARING ON MOTION (I) TO OVERTURN CONSENT ORDER WITH  
GEORGIA DEPARTMENT OF REVENUE REGARDING DEBTOR'S SALES TAX  
LIABILITY and (II) FOR HEARING TO DETERMINE DEBTOR'S SALES TAX  
LIABILITY**

**PLEASE TAKE NOTICE**, that Debtor has filed a Motion (I) to Overturn Consent Order with Georgia Department of Revenue Regarding Debtor's Sales Tax Liability and (II) For Hearing to Determine Debtor's Sales Tax Liability. A copy of the Motion is enclosed with this Notice of Hearing.

**PLEASE TAKE FURTHER NOTICE** that a hearing on the Motion will be held on May 6, 2008 at 11:00 a.m. in Courtroom 1404, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia.

Your rights may be affected by the court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is Clerk, U. S. Bankruptcy Court, Suite 1340, 75 Spring Street, Atlanta Georgia 30303. You must also mail a copy of your response to the undersigned attorney for the Debtor and to the attorney for the Trustee.

This 7<sup>th</sup> day of April 2008.

s/Rodney L. Eason  
Rodney L. Eason, Esq.  
Georgia Bar No. 237485  
Attorney for Debtor

THE EASON LAW FIRM  
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
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IN RE:	)	CHAPTER 11
	)	
MOUZON ENTERPRISES, INC.	)	CASE NO. 05-86016
	)	
<u>Debtor</u>	)	JUDGE MASSEY
	)	
MOUZON ENTERPRISES, INC.	)	
	)	
Plaintiff	)	
	)	
v.	)	CONTESTED MATTER
	)	
GEORGIA DEPARTMENT OF REVENUE)	)	
	)	
Defendant	)	

**MOTION (I) TO OVERTURN CONSENT ORDER WITH GEORGIA  
DEPARTMENT OF REVENUE REGARDING DEBTOR'S SALES TAX  
LIABILITY and (II) FOR HEARING TO DETERMINE DEBTOR'S SALES TAX  
LIABILITY**

COMES NOW, Mouzon Enterprises, Inc, debtor and debtor-in-possession,  
("Debtor") by and through its undersigned counsel, files its Motion to Overturn Consent  
Order with Georgia Department of Revenue ("GA Revenue") and for Hearing to  
Determine Debtor's Sales Tax Liability, as follows:

1.

On December 31, 2007, this Court granted the Motion to Reopen Case filed by  
Milton Mouzon and Glenda Mouzon ("Interested Parties") on behalf of Mouzon  
Enterprises, Inc. ("Debtor"). Reopening Debtor's case was necessary to allow the Court  
to address new issues regarding a Consent Order between Debtor and GA Revenue  
relative to the sales tax liability being imposed on Debtor. The salient facts are as  
follows.

2.

On or about May 9, 2006, GA Revenue filed a proof of claim alleging a priority tax claim in the amount of \$472,591.89 (proof of claim #8). The proof of claim also alleges an unsecured claim of \$69,098.79 to cover accrued penalty and interest.

3.

The basis for the priority tax claim was an estimation by the GA Revenue of sales tax due since the Debtor had not filed certain sales tax returns prior to filing its Chapter 11 case. However, Debtor's accountant filed the missing sales tax returns during the course of Debtor's Chapter 11 case. These returns were prepared for Debtor based on sales information provided by Debtor's representative.

4.

Following discussions on the sales tax returns, Debtor and GA Revenue entered into a Consent Order (doc #109). The Consent Order set forth Debtor's sales tax obligation to GA Revenue as being \$204,031.99, consisting of 174,348.84 in priority sales taxes and \$29,683.15 in penalties and interest.

5.

On June 20, 2007, following the administration of Debtor's Chapter 11 case, Debtor's case was dismissed.

6.

On or about November, 2007, GA Revenue assessed the Interested Parties with Debtor's sales tax obligation, which the Interested Parties contested. Hearings on the assessments before the Georgia Office of State Administrative Hearings ("OSAH") have

been by the administrative law judges stayed pending a determination on the Consent Order by this Court.

7.

While preparing for the OSAH hearings, Interested Parties discovered that a mistake of fact occurred between Debtor and GA Revenue. Specifically, Interested Parties discovered that the sales tax assessment included sales tax on Debtor's contract labor costs. Labor costs are not subject to sales tax under applicable state tax law. *O.C.G.A. § 48-8-2(9)(B)(ii)*. As a result, Interested Parties prepared and filed corrected sales tax returns with GA Revenue showing the actual tax liability as being \$54,818.54.

8.

GA Revenue responded with a request for summary determination filed with OSAH based on prior case law holding that OSAH does not have the authority to change the assessment against the Interested Parties given the determination as to Debtor's sales tax liability made in the Chapter 11 case.

9.

Bankruptcy Rule 9024 grants this Court authority to overturn an Order where manifest injustice will result from its enforcement. In this case, the Consent Order contains a material mistake of fact that the Debtor (and the Interested Parties) could not have discovered at the time as it was based on the work product of Debtor's accountant.

WHEREFORE, Debtor requests (a) an order overturning the Consent Order between Debtor and the GA Revenue, (b) an order determining of Debtor's sales tax liability to GA Revenue, following a hearing on same, and (c) an order granting Debtor

such additional relief as is just and proper under the Bankruptcy Code and Bankruptcy Rules, including Rule 9014.

This 7<sup>th</sup> day of April 2008.

s/Rodney L. Eason  
Rodney L. Eason, Esq.  
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Attorney for Debtor

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**CERTIFICATE OF SERVICE**

This is to certify that I have this date served a copy of the NOTICE OF HEARING and MOTION (I) TO OVERTURN CONSENT ORDER WITH GEORGIA DEPARTMENT OF REVENUE REGARDING DEBTOR'S SALES TAX LIABILITY and (II) FOR HEARING TO DETERMINE DEBTOR'S SALES TAX LIABILITY by mailing a copy of same with sufficient postage affixed thereon to ensure delivery addressed to all interested parties as follows:

Office of U.S. Trustee  
362 Richard Russell Building  
75 Spring St., S.W.  
Atlanta, GA 30303

Oscar B. Fears, III  
Assistant Attorney General  
40 Capitol Square, SW  
Atlanta, GA 30334

Mouzan Enterprises, Inc.  
2492 M.L. King Jr. Drive, SW  
Atlanta, GA 30311

Glenda Robertson Mouzan  
P.O. Box 962575  
Riverdale, GA 30296

Georgia Department of Revenue  
Attn: Bankruptcy Section  
P.O. Box 161108  
Atlanta, GA 30321

Frances C. Mulderig  
Assistant Attorney General  
40 Capitol Square, SW  
Atlanta, GA 30334

This 7<sup>th</sup> day of April 2008.

s/Rodney L. Eason  
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Attorney for Debtor

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